

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NANCY DENARDI,

Plaintiff,

-against-

DRA IMAGING, P.C. and IMAGING SUPPORT  
SERVICES, LLC,

Defendants.  
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**DECLARATION IN SUPPORT  
OF DEFENDANTS' MOTION  
FOR SUMMUARY JUDGMENT**

07 CIV. 5794 (MGC)

I, **STEPHANIE L. BURNS**, an attorney duly admitted to practice before the Courts of the State of New York and before the United States District Court, Southern District of New York, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am a member of the law firm of Keane & Beane, P.C., which is attorney for Defendants DRA Imaging, P.C. ("DRA") and Imaging Support Services, LLC ("ISS") (collectively the "Defendants") in this action. I make this Declaration for the purpose of submitting to this Court documentary evidence as introduced below, in support of Defendants' motion made pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), for an order: (i) dismissing the Complaint in its entirety; or, alternatively, (ii) dismissing DRA from this action; and (iii) awarding the Defendants such other and further relief as the Court deems just and proper.

2. A true copy of the Complaint in this action is annexed hereto as Exhibit "A".

3. A true copy of the Answer to the Complaint in this action is annexed hereto as Exhibit "B".

4. On or about December 21, 2007, Defendants responded to Plaintiff's First Notice to Produce. As part of this response, the personnel file maintained by Defendants concerning

Plaintiff was produced. From her personnel file, a New Employee Benefit Check List, dated September 7, 1999, is annexed hereto as Exhibit "C", as bates stamped for production in this action. From her personnel file, a payroll status change form with effective date March 6, 2000 is annexed hereto as Exhibit "D", as bates stamped for production in this action. From her personnel file, a Notice and Proof of Claim Disability Benefits is annexed hereto as Exhibit "E", as bates stamped for production in this action. This document indicates Plaintiff's absence from work began on or about October 8, 2005. From Plaintiff's personnel file, typed notes dated May 9, 2006 concerning May 5<sup>th</sup> and May 8<sup>th</sup> are annexed hereto as Exhibit "F", as bates stamped for production in this action.

5. Defendants' Response to Plaintiff's First Notice to Produce also produced various business records maintained by the Defendants, annexed hereto in Exhibit "G" are documents setting forth the total hours worked by Plaintiff per pay date from January 1, 2005 to May 26, 2006, as bates stamped for production in this action.

6. On or about February 20, 2008, Plaintiff responded to Defendants' First Notice to Produce. In Exhibit "D" of that response, Plaintiff produced an announcement dated March 24, 2006 and a chart of Billing Department employees, which are annexed hereto respectively as Exhibits "H" and "I". In Exhibit "G" of Plaintiff's Response to Defendants' First Notice to Produce, Plaintiff produced the Earnings Statements attached hereto and made a part hereof as Exhibit "J".

7. The deposition of Plaintiff commenced on March 20, 2008 and continued on April 22, 2008. Relevant excerpts from Plaintiff's deposition transcript are annexed hereto in Exhibit "K".

8. The deposition of Virginia Barkanyi commenced on June 17, 2008 and continued on July 18, 2008. Relevant excerpts from the transcript of Ms. Barkanyi's deposition are annexed hereto in Exhibit "L".

9. The deposition of Mark Newton was conducted on June 20, 2008. Relevant excerpts from the transcript of Mr. Newton's deposition are annexed hereto in Exhibit "M".

10. On or about July 2, 2008, in response to a request from Plaintiff's counsel, Defendants produced certain time punch records for Plaintiff and her daughter, Heather DeNardi. Relevant excerpts from this production that indicate the hours worked by Plaintiff in 2006 are annexed hereto as Exhibit "N".

11. The deposition of Heather DeNardi was conducted on July 18, 2008. Relevant excerpts from the transcript of her deposition are annexed hereto in Exhibit "O".

Dated: White Plains, New York  
September 9, 2008

  
STEPHANIE L. BURNS (SB 3467)

EXHIBITS TO BURNS DECLARATION	
EXHIBIT	DESCRIPTION
A	Complaint
B	Answer to the Complaint
C	New Employee Benefit Check List, dated September 7, 1999
D	Payroll Status Change Form with effective date March 6, 2000
E	Notice and Proof of Claim Disability Benefits
F	Typed notes dated May 9, 2006
G	Total hours worked by Plaintiff per pay date from January 1, 2005 to May 26, 2006
H	Announcement of hiring Shari McCauley dated March 24, 2006
I	Chart of Billing Department employees
J	Plaintiff's Earnings Statements
K	Relevant excerpts from Plaintiff's deposition transcript
L	Relevant excerpts from the deposition transcript of Virginia Barkanyi
M	Relevant excerpts from the deposition transcript of Mark Newton
N	Time clock records that indicate the hours worked by Plaintiff in 2006
O	Relevant excerpts from the deposition transcript of Heather DeNardi